IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION(BAIL) N0. 72 OF 2007

Dhananjay Ozale
presently lodged in
Judicial Lock-up. ... Applicant

versus

State of Goa represented
by Officer in Charge, Anti
Narcotic Cell Police Station. ... Respondent

Ms. Caroline Collasso, Advocate for the Applicant.

CORAM : N. A. BRITTO, J.

DATE : 29TH MARCH, 2007.

ORAL ORDER

Heard Ms. C. Collasso, the learned Counsel on behalf of the applicant, on application for bail dated 20-3-2007.

2. The applicant was arrested on 25-10-2006 with an allegation that he was found in possession of 540 gms. of charas. The applicant is being prosecuted under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985(Act, for short). The applicant approached the trial Court for bail but that request came to be rejected by Order dated 26-2-2007 and therefore the applicant has approached this Court for bail.

3. There is no dispute that earlier the applicant was convicted and sentenced to undergo ten years of imprisonment under Section 20(b)(ii) of the said Act. There is no dispute that the applicant underwent the said sentence imposed upon him and within three months of his release from jail was found to have committed another offence under Section 20(b)(ii)(B) of the said Act. The learned Special Judge, in denying the bail to the applicant has stated that the applicant has intention of committing similar type of crimes and in case he is enlarged on bail the applicant will get another opportunity to commit such offences again.

4. The learned Counsel on behalf of the applicant submits that the applicant was found on 25-10-2006 with 540 gms. of charas which is a variable quantity and therefore the grant of bail to the applicant is not prohibited by Section 37 of the Act. Submitting that in a similar case this Court had admitted another applicant on bail, the learned Counsel has placed reliance on the case of **Eknath Agarwadekar** v. **State of Goa**(Criminal Miscellaneous Application No.157 of 2006) decided on 24-3-2006. I have perused the said decision which is inapplicable to the facts of this case where the accused after having undergone about ten years of imprisonment and another one year in default of payment of fine has chosen to go back to the life of crime by committing similar offence again.

5. The learned Counsel is right in contending that the applicant, having been found with variable quantity of charas there is no prohibition to

grant bail to him, as envisaged by Section 37 of the Act. However, it is to be noted that a person accused of a non bailable offence cannot claim bail as a matter of right and the question always is one of discretion of the Court which discretion is always to be exercised considering the totality of the facts and circumstances of a given case. Likelihood of committing offences whilst on bail is one of the considerations which the Court is required to look into whilst granting bail to an accused. The facts of the case at hand clearly show that the accused has a propensity or tendency to continue to commit the offences for which earlier the applicant has undergone imprisonment. It appears that the sentence undergone by the accused has neither deterred him nor reformed him. Granting of bail now would be yet another licence to the accused to continue his activity to deal with drugs.

6. Considering the facts, this is not a fit case to admit the accused to bail.

7. Application rejected.

N. A. BRITTO, J.

RD